U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 8 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a fourth motion to reopen and to reconsider. The motion will be dismissed.

The petitioner is an individual who seeks to classify the beneficiary pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B), as an outstanding scientific researcher. The director determined the petition was not accompanied by the requisite job offer, and that the beneficiary had not been shown to qualify as an outstanding professor or researcher. The Associate Commissioner affirmed the decision of the director on appeal and on motion.

On this fourth motion, the petitioner submits additional documentation.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers.--Visas shall first be made available...to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (B) Outstanding Professors and Researchers.--An alien is described in this subparagraph if--
>
> (i) the alien is recognized internationally as outstanding in a specific academic area,
>
> (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
>
> (iii) the alien seeks to enter the United States--
>
> (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
>
> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
>
> (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has

achieved documented accomplishments in an academic field.

Any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under § 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification. The petitioner is not qualified to petition for the beneficiary under this classification. He is not a United States employer, but a friend of the beneficiary.

The petitioner does not state any reasons for reconsideration, nor does the petitioner furnish any new facts to be provided in the reopened proceeding.

As argument, the petitioner states:

> . . .I would like to ask you to refer to my sponsorship as private. As I have written before, I am able in full to sponsor [redacted]. . .
>
> [redacted] is educated, respectable, calm person. The evidence of that statement is a letter of recommendation from her priest.
>
> [redacted] doesn't have reason to go back to [redacted] Only three months after receiving her doctorate, it was illegally taken away. She wrote to UNESCO (copy included). She did not appeal to the court, because the judges are communists, [redacted] had absolutely no chance.
>
> At the present time, [redacted] is unable to apply at any University, or any scientific institution, due to the fact of no green card.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 CFR 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. 8 CFR 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1]

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[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984) (emphasis in original).

Furthermore, 8 CFR 103.5(a)(2) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not submitted any document that would meet the requirements of a motion to reconsider. The petitioner does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. The petitioner does not argue that the previous decisions were based on an incorrect application of law or Service policy. The petitioner does not assert that a motion to reconsider should be considered as an alternative to the motion to reopen. Assuming, *arguendo*, that the petitioner intended to file a motion to reconsider, the petitioner's motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the case will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.